

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

FEB 25 1999

IN THE MATTER OF:

DOCKET NUMBER: 98-02658

COUNSEL:

HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

The Active Duty Service Commitment (ADSC) for E-4B training retroactive added to his personnel records on 17 September 1998, be deleted.

APPLICANT CONTENDS THAT:

He was never briefed of an ADSC for E-4B training, but, in fact, was told by several personnel officials and his chain of command that there was no ADSC for the E-4B training.

STATEMENT OF FACTS:

Applicant completed E-4B Initial Qualification Training (IQT) on 16 February 1997. As a result, he incurred a five-year ADSC of 15 February 2002. However, it appears that the ADSC was not updated in his records until he requested an ADSC verification in August 1998.

AIR FORCE EVALUATION:

HQ AFPC/DPPRR recommends that the application be denied. It indicates, in part, that applicant has gone to great lengths to find personnel who will corroborate his statements of not being briefed on the five-year ADSC. However, chances are none of these individuals were present at the time he received his initial relocation briefing from the relocation element of the Military Personnel Flight (MPF). At the time of his selection for crossflow into the E-4B training and subsequent PCS to Offutt, his assignment action officer, Major "C", noted in the assignment worksheet trailer remarks section, 'Compute ADSC IAW AFI 36-2107, T1.9, R1 for PCS and T1.5, R1 for training. You will incur the following ADSC IAW AFI 36-2107, for this training: 5-years.' (Atch 2) Additionally, Major "C" placed these same statements on the Assignment Load Data worksheet (Atch 3); used as the sole source document to load the assignment data into the

personnel data system and which subsequently generates the assignment notification Report on Individual Person (RIP).

Applicant states that the \\personnelagency selecting someone for an ADSC incurring event is required to cite the MPF the specific table and rule that apply and ensure that person goes to the MPF for counseling... This was not accomplished." However, this was accomplished. Because the assignment was a short notice action, the assignment officer was required to send an electronic message to notify applicant of the assignment. He placed the exact same comment from the assignment worksheet on the actual assignment notification message (Atch 4). This message would have been the instrument used by the personnel clerk in lieu of a system generated assignment notification RIP, to brief applicant on the particulars of his assignment, per the assignment officer's instructions on that message. This information would also have been printed in the remarks section of the assignment notification RIP which applicant would have eventually signed, acknowledging acceptance of the assignment. Counseling is normally accomplished during PCS relocation counseling necessary to prepare members' orders and to resolve any issues related to the upcoming PCS. However, relocation folders are destroyed a few months after the member's departure so are unavailable for them to review to determine exactly what information was provided to applicant.

By no means are they asserting that applicant is being dishonest. They are confident that given applicant's sterling record, he has served the Air Force honorably for over 13 years. Applicant assures them he never signed an AF Form 63 acknowledging the five-year ADSC. Although MPFs are supposed to forward copies of AF Forms 63 to the officer's permanent files (at unit level and at AFPC), they sometimes neglect to do so; sometimes - as is alleged in this case - they fail to even accomplish an AF Form 63. (They suggest that could be due to the MPF clerk's confusion regarding PCS ADSC counseling, which requires no documentation (Atch 5), and the training ADSC counseling, which occurred simultaneously. Although the latter should have been documented, it is possible the clerk mistakenly assumed otherwise). However, one cannot ignore the fact that the ADSC was clearly noted on the assignment notification message and, in the absence of an AF Form 63, that message served as the source document for the officer's acknowledgment of the training and acceptance of the ADSC associated with it (Exhibit C with Attachments 1 through 5).

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

Counsel states, in part, that the advisory opinion in this case is a desperately circuitous and totally ineffective, effort to maintain the status quo when the facts show that the status quo is wrong. The five-year ADSC that has been unilaterally,

unknowingly and involuntarily imposed by AFPC should be deleted from applicant's record.

The circuitry of the opinion takes a number of forms. First, DPPRR does not "assert that applicant is being dishonest," but then essentially accuses him of lying about having been counseled on a two-year (rather than five-year) ADSC. Second, DPPRR impugns applicant's corroborating witnesses for not having been present at his counseling sessions, but then relies on the actions of an AFPC officer (Major "C") who was not present either. Third, DPPRR assumes that MPF personnel followed their instructions when counseling applicant, but then offers a variety of speculative "justifications" for why those same MPF personnel failed to follow their instructions to have applicant sign the all-important AF Form 63 to document that counseling. DPPRR's arguments are circuitous because reality, propriety and justice will not support the involuntary imposition of a five-year ADSC in this case.

1. DPPRR's advisory opinion presumes that a five-year ADSC was, in fact, associated with applicant's E-4B training. The evidence in this case, however, shows that everyone in the Air Force, with the apparent exception of Major "C", was of the opinion that no ADSC was involved. AFPC/DPPRR confirmed this to Lieutenant Colonel Martin P. "D", the 1 ACCS Operations Officer, who felt that the lack of an ADSC threatened the stability of the E-4B program. See DD 149, Attachment 13. To fill that void, Lt Col "D" took actions that led to the release of Interim Change (IC) 97-1 to AFI 36-2107. IC 97-1 added the E-4B to Table 1-5 for the first time and provided for a three-year (rather than five-year) ADSC. Until then, no provision in AFI 36-2107 applied to the different training that applicant and other E-4B pilots received. Thus, the five-year ADSC now being imposed by AFPC should be deleted from applicant's record because it was unauthorized by the AFI 36-2107 in effect at the time of applicant's training and is two years longer than the ADSC that was ultimately authorized by IC 97-1. In the event of an authoritative determination that AFI 36-2107 (1994) did provide for a five-year ADSC for E-4B training, the balance of this memorandum will address the substance of the DPPRR claim that applicant incurred such an ADSC.

2. DPPRR's position rests largely on the faulty hypothesis that applicant was counseled because he should have been counseled. This position, commonly referred to as the "presumption of administrative regularity," was addressed by the Court of Appeals in *Kelly v. United States*, 826 F.2d 1049 (Fed. Cir. 1987). In that case, the Air Force argued that the widow of a retired officer had been notified of her husband's Survivor Benefit Plan (SPB) election because regulations required that she be notified. The Court disagreed because the "presumption of administrative regularity" disappears in the fact of evidence to the contrary. It held that the widow's denial of notice was sufficient to rebut the "presumption" and require the Air Force

to prove that notice was in fact given See Dean v. United States, 10 Cl. Ct. 563, 371 (1986). Counsel's complete brief is included as Exhibit E.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.
 2. The application was timely filed.
 3. Sufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice warranting favorable action on the applicant's request. Counsel contends the was never briefed of an ADSC for E-4B training, but, in fact, was told by several personnel officials and his chain of command that there was no ADSC for the E-4B training. Although the Air Force initially recommended denial of the application, we have now been advised via e-mail that his case meets the criteria for administrative relief under the recently approved Rule of Engagement (ROE) relating to resolving ADSC disputes. In view of the foregoing, equity dictates that the relief sought be granted.
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THE BOARD RECOMMENDS THAT:

The pertinent military records of the Department of the Air Force relating to APPLICANT, be corrected to show that his five-year Active Duty Service Commitment (ADSC) incurred as a result of his completion of E-4B Initial Qualification Training on 16 February 1997, be declared void and removed from his records.

The following members of the Board considered this application in Executive Session on 19 February 1999, under the provisions of AFI 36-2603:

Mr. Benedict A. Kausal, IV, Panel Chair
Mr. Charles E. Bennett, Member
Mr. Henry Romo, Jr., Member

All members voted to correct the records, as recommended. The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 21 Sep 98, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, AFPC/DPPRR, dated 3 Dec 98, w/atchs.

- Exhibit D. Letter, SAF/MIBR, dated 21 Dec 98.
Exhibit E. Letter, Counsel, dated 15 Jan 99, w/atchs.
Exhibit F. E-Mail, AFPC/DPPRS, dated 10 Feb 99.



'BENEDICT A. KAUSAL, IV
Panel Chair



DEPARTMENT OF THE AIR FORCE
WASHINGTON, D. C.

FEB 25 1999

Office of the Assistant Secretary

AFBCMR 98-02658

MEMORANDUM FOR THE CHIEF OF STAFF

Having received and considered the recommendation of the Air Force Board for Correction of Military Records and under the authority of Section 1552, Title 10, United States Code (70A Stat 116), it is directed that:

The pertinent military records of the Department of the Air Force relating to [REDACTED] be corrected to show that his five-year Active Duty Service Commitment (ADSC) incurred as a result of his completion of E-4B Initial Qualification Training on 16 February 1997, be, and hereby is, declared void and removed from his records.


JOE G. LINEBERGER
Director

Air Force Review Boards Agency